

1
2
3
4
5 USA,
6 Plaintiff,
7 v.
8 REKHI,
9 Defendant.
10
11

12 Case No. [19-cr-00180-CRB-1](#)
13
14

15 **ORDER DENYING MOTION FOR A
16 REDUCED SENTENCE UNDER 18
17 U.S.C. § 3582(C)(1)(A)**

18 Defendant Raminder Rekhi has moved for a reduced sentence under 18 U.S.C.
19 § 3582(c)(1)(A). See Mot. (dkt. 35). The Court denies Mr. Rekhi's motion because (1) he
20 has not shown that extraordinary and compelling circumstances warrant a reduced
21 sentence, and (2) the 18 U.S.C. § 3553(a) factors do not support a reduced sentence. The
22 Court determines that there is no need for oral argument.
23
24

I. BACKGROUND

25 On November 13, 2019, Mr. Rekhi pleaded guilty to one count of theft,
26 embezzlement, or misapplication of bank funds in violation of 18 U.S.C. § 656. See
27 Judgment (dkt. 34) at 1. Mr. Rekhi committed this offense as a Business Development
Officer at Wells Fargo Bank. See Plea Agreement (dkt. 16) at 2. Mr. Rekhi tricked a
married couple into depositing \$3.5 million into bank accounts that Mr. Rekhi controlled;
the couple believed they were depositing the money into high-interest Wells Fargo
Certificates of Deposit (CDs). Id. at 3. With the money, Mr. Rekhi made loans to three
other individuals. Id. at 4. In short, Mr. Rekhi used the couple's money as capital to
operate his own illegitimate banking business.

28 On September 9, 2020, the Court sentenced Mr. Rekhi to 18 months imprisonment

1 followed by three years of supervised release. See Judgment at 2–3. The Court ordered
2 Mr. Rekhi to self-surrender on January 19, 2021. Id. at 2. The Bureau of Prisons has
3 designated the minimum-security camp at FCI-Sheridan as Mr. Rekhi’s facility. See Opp.
4 (dkt. 40) at 15.

5 On December 22, 2020, Mr. Rekhi moved for a reduced sentence under 18 U.S.C.
6 § 3582(c)(1)(A). See Mot. at 19. The Court approved the parties’ stipulation to a briefing
7 schedule and to a modified surrender date of February 26, 2021. See Order Granting Stip.
8 (dkt. 38) at 3. Mr. Rekhi argues that his hypertension, obesity, hypercholesterolemia, and
9 sleep apnea—when considered in the context of the COVID-19 pandemic—constitute
10 extraordinary and compelling reasons to reduce his sentence. See Mot. at 12–16. Mr.
11 Rekhi is 41 years old. See Revised PSR (dkt. 32) at 2.

12 **II. LEGAL STANDARD**

13 The Sentencing Reform Act of 1984, 18 U.S.C. § 3551 et seq., does not generally
14 permit federal courts to “modify a term of imprisonment once it has been imposed.”
15 Dillon v. United States, 560 U.S. 817, 819 (2010) (quoting 18 U.S.C. § 3582(c)).
16 Congress has provided certain exceptions to that rule. As relevant here, a court may
17 reduce a defendant’s sentence under 18 U.S.C. § 3582(c)(1)(A)(i) if certain procedural
18 requirements are met and if “extraordinary and compelling reasons warrant such a
19 reduction.”

20 Before the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, a defendant
21 could not bring a motion for compassionate release under § 3582(c). Under the original
22 compassionate release framework, enacted as part of the Comprehensive Crime Control
23 Act of 1984, only the Director of the Bureau of Prisons could move for compassionate
24 release on a defendant’s behalf. See 18 U.S.C. § 3582(c)(1)(A) (2017).

25 But effective December 2018, the First Step Act permits a defendant to move for
26 relief under § 3582(c)(1)(A) if the defendant satisfies the statute’s exhaustion
27 requirements. See First Step Act § 603(b)(1). The defendant may bring a motion only
28 once he has “fully exhausted all administrative rights to appeal a failure of the Bureau of

1 Prisons" to bring the motion on his behalf, or after "the lapse of 30 days from the receipt of
2 such a request by the warden of the defendant's facility, whichever is earlier." 18 U.S.C.
3 § 3582(c)(1)(A).

4 The First Step Act did not alter the original framework's requirements that a court
5 consider the factors set forth in 18 U.S.C. § 3553(a) before granting a motion for a reduced
6 sentence, see 18 U.S.C. § 3582(c)(1)(A), and that any sentence reduction under § 3582(c)
7 must be "consistent with applicable policy statements issued by the Sentencing
8 Commission," 18 U.S.C. § 3582(c)(1)(A).

9 Before the First Step Act enabled defendants to bring their own motions for
10 compassionate release under § 3582(c)(1)(A), the Sentencing Commission promulgated a
11 policy statement enumerating circumstances constituting "extraordinary and compelling
12 reasons" to reduce a sentence, U.S.S.G. § 1B1.13 cmt n.1, and directing that a court may
13 reduce a sentence under § 3582(c)(1)(A) only if the court finds that "[t]he defendant is not
14 a danger to the safety of any other person or to the community, as provided in 18 U.S.C.
15 § 3142(g)," U.S.S.G. § 1B1.13(2). The policy statement refers to motions brought by the
16 Director of the Bureau of Prisons, and not to motions brought by defendants, as defendants
17 could not bring such motions when the policy statement was last amended. See U.S.S.G.
18 § 1B1.13.

19 Because the policy statement has not been updated or modified since Congress
20 enacted the First Step Act, it is not obvious whether it applies to motions brought by
21 defendants. Several U.S. Circuit Courts have held that because the policy statement refers
22 only to motions brought by the director of the Bureau of Prisons, it does not apply to
23 motions brought by defendants. See Brooker, 976 F.3d 228; United States v. Gunn, 930
24 F.3d 1178 (7th Cir. 2020); United States v. McCoy, 981 F.3d 271 (4th Cir. 2020).
25 According to these courts, the Sentencing Commission has not promulgated any policy
26 statement that limits district courts' discretion to grant motions brought by defendants
27 under § 3582(c). See, e.g., Brooker, 976 F.3d at 237. If that is right, district courts are
28 neither required to consider whether the defendant is a danger to the community under

1 U.S.S.G. § 1B1.13(2) nor limited to recognizing only those “extraordinary and
2 compelling” circumstances enumerated by the Sentencing Commission in U.S.S.G.
3 § 1B1.13 cmt n.1. Other courts have disagreed, holding that U.S.S.C. § 1B1.13 controls to
4 the extent it does not squarely conflict with § 3582(c)(1)(A), as amended by the First Step
5 Act. See, e.g., United States v. Lynn, No. 89-0072-WS, 2019 WL 3805349 (S.D. Ala.
6 Aug. 13, 2019).

7 Today, the Court need not resolve whether the Sentencing Commission’s policy
8 statement applies to motions brought by defendants. Even if the policy statement applies
9 only to motions brought by the Director of the Bureau of Prisons, the Court presently
10 agrees with the policy statement’s definition of “extraordinary and compelling reasons”
11 and the policy statement’s guidance that people who present a danger to the community
12 should not be granted compassionate release.

13 First, the Sentencing Commission’s enumerated circumstances constituting
14 “extraordinary and compelling reasons” to reduce a sentence all relate to a defendant’s
15 individual characteristics or conditions—that is, some combination of the defendant’s
16 health, age, and family situation. See U.S.S.G. § 1B1.13 cmt n.1. For example, if the
17 defendant suffers from “a terminal illness (i.e., a serious and advanced illness with an end
18 of life trajectory)” or “a serious physical or mental condition, . . . serious functional or
19 cognitive impairment, or . . . deteriorating physical or mental health because of the aging
20 process . . . that substantially diminishes the ability of the defendant to provide self-care
21 within the environment of a correctional facility and from which he or she is not expected
22 to recover,” the “extraordinary and compelling reasons” standard is satisfied. See U.S.S.G.
23 § 1B1.13 cmt. n.1(A)(i)(i)–(ii). The standard is also satisfied if “[t]he defendant (i) is at
24 least 65 years old; (ii) is experiencing a serious deterioration in physical or mental health
25 because of the aging process; and (iii) has served at least 10 years or 75% of his or her
26 term of imprisonment, whichever is less,” U.S.S.G. § 1B1.13 cmt. n.1(B), or in certain
27 circumstances requiring the defendant to care for minor children or a spouse or registered
28 partner, id. § 1B1.13 cmt. n.1(C). Finally, the standard is satisfied if, “[a]s determined by

1 the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary
2 or compelling reason other than, or in combination with," the above-described
3 circumstances. U.S.S.G. § 1B1.13 cmt. n.1(D).

4 The Sentencing Commission's enumerated circumstances constituting
5 "extraordinary and compelling reasons" to reduce a sentence are sensible. Although a
6 future motion could conceivably persuade the Court that these circumstances fail to
7 capture the full range of "extraordinary and compelling reasons" to reduce a sentence
8 under § 3582(c)(1)(A), the Court is yet to encounter such a motion.

9 Second, as discussed above, the Sentencing Commission has directed that a court
10 may reduce a sentence under § 3582(c)(1)(A) only if the court finds that "[t]he defendant
11 is not a danger to the safety of any other person or to the community, as provided in 18
12 U.S.C. § 3142(g)." U.S.S.G. § 1B1.13(2). Section 3142(g), in turn, requires courts to
13 "take into account" four factors when determining the defendant's dangerousness: (1) "the
14 nature and circumstances of the offense charged," (2) "the weight of the evidence against
15 the person," (3) "the history and characteristics of the person," and (4) "the nature and
16 seriousness of the danger to any person or the community that would be posed by the
17 person's release." 18 U.S.C. § 3142(g).

18 This framework is also sensible. Indeed, the Court would not exercise its discretion
19 under § 3582(c)(1)(A) to grant relief to a defendant that the Court determines is a danger to
20 the community. Thus, even if permitted, the Court sees no reason to deviate from the
21 policy statement's dangerousness requirement, which ensures that the Court carefully
22 weighs the public's interest in safety before reducing a defendant's sentence.

23 As to both aspects of the policy statement, the Court also presently finds that it
24 would be illogical to apply a stricter standard to motions brought by the Director of the
25 Bureau of Prisons than to motions brought by defendants. No one disputes that the
26 Sentencing Commission's policy statement continues to apply to motions brought by the
27 Director of the Bureau of Prisons. See, e.g., Brooker, 976 F.3d at 235. The Court declines
28 to approach motions brought by the government seeking a defendant's release on behalf of

1 a defendant with more scrutiny than motions brought by defendants seeking their own
2 release. Thus, the Court continues to rely on the policy statement as establishing helpful
3 objective guideposts for evaluating whether a defendant should be granted compassionate
4 release under § 3582(c)(1)(A).

5 **III. DISCUSSION**

6 The Court denies Mr. Rekhi’s motion for a reduced sentence because Mr. Rekhi has
7 not shown extraordinary and compelling reasons to reduce his sentence and the factors set
8 forth in 18 U.S.C. § 3553(a) do not support reducing his sentence.

9 Mr. Rekhi has satisfied the statute’s exhaustion requirement such that the Court
10 may decide his motion on the merits. Although not yet in custody, Mr. Rekhi applied for
11 release on October 15, 2020 and did not receive a response. See Mot. at 11. The Court
12 has previously noted that the statute does not expressly or implicitly require movants to be
13 in custody. United States v. Hussain, No. 16-cr-462-CRB-1, 2020 WL 5910065, at *3
14 (N.D. Cal. Oct. 6, 2020). The parties agree on this point—and also agree that the Court
15 should address the merits of Mr. Rekhi’s motion. See Mot. at 11; Opp. (dkt. 40) at 4.¹

16 That said, Mr. Rekhi has not shown that “extraordinary and compelling reasons”
17 warrant a reduced sentence. Mr. Rekhi bases his motion on his “pre-existing health
18 conditions of hypertension, obesity, hypercholesterolemia, and sleep apnea,” which he
19 argues make him “among those most at risk of serious illness or death if he is exposed to
20 coronavirus while in custody.” Mot. at 15. But while serious instances of these conditions
21 could put an inmate at heightened risk during the pandemic, the available medical evidence
22 does not establish that Mr. Rekhi, an overweight 41-year-old, is at such risk.

23 First, Mr. Rekhi’s has not shown that his hypertension is severe or uncontrolled.
24 CDC guidance suggests that people with common hypertension “might be at an increased

25
26 ¹ The government argues that the exhaustion requirements are inapplicable to Mr. Rekhi because
27 he is not yet in custody. See Opp. at 4. Whether Mr. Rekhi is not subject to the exhaustion
28 requirement or Mr. Rekhi has necessarily exhausted “all administrative rights to appeal a failure of
the Bureau of Prisons to bring a motion” on his behalf because he lacks any such rights while out
of custody, exhaustion is not an issue here.

1 risk for severe illness from the virus that causes COVID-19.” See CDC, “People with
2 Certain Medical Conditions,” updated Feb. 3, 2021, available at
3 <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html#serious-heart-conditions> (last visited Feb. 3, 2021). By contrast,
4 pulmonary hypertension is a recognized risk factor. Id. Here, Mr. Rekhi has submitted
5 under seal a letter from a doctor who has reviewed his medical records. That letter
6 provides scant detail regarding Mr. Rekhi’s hypertension; it says only that Mr. Rekhi has
7 hypertension, that Mr. Rekhi takes medication for his hypertension, and that the doctor is
8 unable to tell how well Mr. Rekhi’s “BP [Blood Pressure] is controlled.” Given the CDC’s
9 uncertain guidance regarding common hypertension and the lack of detail Mr. Rekhi has
10 provided, the Court is unable to conclude that Mr. Rekhi’s hypertension puts him at serious
11 risk.
12

13 Second, Mr. Rekhi’s weight is below the threshold that would justify a finding of
14 heightened risk. The CDC has advised that obesity (a body mass index (BMI) above 30),
15 and particularly severe obesity (a BMI above 40), are risk factors. Id. By contrast, having
16 a BMI between 25 and 30 “might” increase the risk of serious illness. Id. Here, Mr.
17 Rekhi’s doctor’s letter cryptically states that Mr. Rekhi has a BMI “greater than 29.” And
18 Mr. Rekhi does not dispute the government’s contentions that his actual medical records
19 show that his BMI has varied between 23 and 29.77 over time, and that Mr. Rekhi’s latest
20 known BMI was 27.9. See Opp. at 11; Reply (dkt. 41) at 3. Thus, Mr. Rekhi is
21 overweight but not obese.

22 Mr. Rekhi has not presented other grounds to conclude that contracting COVID-19
23 would put him at heightened risk of serious illness. He cites his high cholesterol and sleep
24 apnea, but the CDC recognizes neither as independent risk factors. See CDC, “People
25 with Certain Medical Conditions,” updated Feb. 3, 2021, available at
26 <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html#serious-heart-conditions>. Although Mr. Rekhi’s doctor states that Mr.
27 Rekhi’s cholesterol makes him “prone” to heart disease, he does not have heart disease or
28

1 cite any other recognized risk factor.

2 The current situation at FCI-Sheridan reinforces the Court's conclusion that Mr.
3 Rekhi has not shown extraordinary and compelling reasons for a reduced sentence. In
4 mid-January 2021, FCI-Sheridan inmates and staff began receiving vaccinations. And
5 although infection rates may change over time, as of February 4, 2021, seven inmates out
6 of 1,407 are infected with the virus. See BOP, "Covid-19 Cases," updated Feb. 4, 2021,
7 available at <https://www.bop.gov/coronavirus/> (last visited Feb. 4, 2021); BOP, "FCI
8 Sheridan," available at <https://www.bop.gov/locations/institutions/she/> (last visited Feb. 3,
9 2021). The Court is unaware whether any of these seven inmates are housed at FCI-
10 Sheridan's minimum-security camp where Mr. Rekhi will serve his sentence. The
11 government avers that as of January 21, 2021, there were no confirmed cases at the
12 minimum-security camp. See Opp. at 15. All of this is to say that while the spread of
13 COVID-19 in federal prisons is a serious problem, and the relevant data could change
14 quickly, the situation at Mr. Rekhi's specific facility is not dire.

15 Leaving aside whether Mr. Rekhi has shown extraordinary and compelling reasons
16 for a reduced sentence, the factors set forth in 18 U.S.C. § 3553(a) do not support granting
17 Mr. Rekhi's motion. Section 3553(a) requires a court to consider various factors,
18 including but not limited to

19 (2) the need for the sentence imposed—

- 20 (A) to reflect the seriousness of the offense, to promote respect for
the law, and to provide just punishment for the offense;
- 21 (B) to afford adequate deterrence to criminal conduct;
- 22 (C) to protect the public from further crimes of the defendant; and
- 23 (D) to provide the defendant with needed educational or vocational
training, medical care, or other correctional treatment in the
most effective manner.

24 18 U.S.C. § 3553(a)(2). The Court weighed these considerations when sentencing Mr.
25 Rekhi to 18 months imprisonment followed by three years of supervised release. See
26 Judgment at 2–3. To date, Mr. Rekhi has not served any time in custody. Reducing his
27 sentence or modifying it to a term of home confinement would not reflect the seriousness
28

1 of his offense or deter Mr. Rekhi and others from engaging in the sort of criminal conduct
2 at issue here.

3 Because the court determines that Mr. Rekhi has not shown that “extraordinary and
4 compelling reasons” warrant reducing his sentence, and that the § 3553(a) factors do not
5 support reducing his sentence, the Court need not consider whether Mr. Rekhi is a danger
6 to the community. Mr. Rekhi fails to satisfy the criteria for a reduced sentence under
7 § 3582(c)(1)(A). The Court also declines to postpone Mr. Rekhi’s surrender date given
8 that Mr. Rekhi has (1) not requested such relief, and (2) complained that his surrender date
9 might “keep being pushed into the future.” Mot. at 1.²

10 **IV. CONCLUSION**

11 For the foregoing reasons, Mr. Rekhi’s motion for a reduced sentence is denied.

12 **IT IS SO ORDERED.**

13 Dated: February 4, 2021



14 CHARLES R. BREYER
15 United States District Judge

16
17
18
19
20
21
22
23
24
25
26
27

28 ² The Court notes that although Mr. Rekhi’s sentencing hearing was continued twice, Mr. Rekhi’s
surrender date has been delayed just once, as a result of Mr. Rekhi’s stipulation to that delay.